

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

JOHN BRINK,

Plaintiff,

v.

PHH MORTGAGE CORPORATION, a
New Jersey corporation,

Defendant.

No. 11 - 2224

SUMMONS

To: Corporation Services Company, Registered Agent
285 Liberty Street NE
Salem, Oregon 97301

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

STATE OF OREGON

County of Columbia

) ss.

mtt 7 dl
SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Michael T. Clarke
ATTORNEY'S/AUTHOR'S NAME

05136
BAR NO.

52490 SE 2nd Street, Suite 150
ADDRESS

Scappoose,
CITY

OR 97056
STATE ZIP

503-543-4800
PHONE

TRIAL ATTORNEY (if other than above) BAR NO.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

mtt 7 dl
ATTORNEY FOR PLAINTIFF

TO THE PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Michael T. Clarke
Attorney at Law
52490 SE 2nd St., Ste. 150
Scappoose, OR 97056
(503) 543-4800

mtt 7 dl
ATTORNEY FOR PLAINTIFF

EXHIBIT A
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CERTIFIED TRUE COPY
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

JOHN BRINK,

Plaintiff,

v.

PHH MORTGAGE CORPORATION, a
New Jersey corporation,

Defendant.

Case No. 11-2224

COMPLAINT

(Negligence; Breach of Contract; Breach
of Duties of Good Faith and Fair Dealing;
Breach of Fiduciary Duty; Defamation)

Claim Not Subject to Mandatory
Arbitration- Claim for \$496,000.00

JURY TRIAL DEMANDED

Plaintiff alleges:

GENERAL ALLEGATIONS

1.

At all times material herein, Plaintiff is an Oregon resident living in Deer Island, Columbia County, Oregon, and is married to Helen Brink. Helen Brink has given John Brink the authority to pursue her claims as described herein. This complaint may be amended to include Helen Brink as a Plaintiff as may become necessary. John and Helen Brink's interest shall be represented by John Brink as Plaintiff but referred to as "Plaintiffs" herein.

2.

At all times material herein, Defendant PHH Mortgage Corporation ("PHH") did and does business in Columbia County, Oregon as a residential home mortgage lender.

3.

1 On or about August 16, 2007, Plaintiffs financed the purchase or refinance of their home
2 with PHH. The finance contract included certain terms, including that Plaintiffs are responsible
3 for payment of homeowners insurance and taxes such that no escrow account would be used by
4 PHH to ensure payment of said insurance and taxes.

5 4.

6 Plaintiffs made their monthly mortgage payments to PHH as required per the mortgage
7 contract.

8 5.

9 On or about March 18, 2010, Plaintiffs' income was drastically decreased and therefore
10 they applied for a Home Affordable Modification Plan with PHH in an attempt to modify their
11 mortgage contract terms and lower their monthly payment. Plaintiffs were denied assistance
12 through the Home Affordable Modification Plan on or about May 22, 2010.

13 6.

14 On or about June 8, 2010, Plaintiffs received notice from PHH that they were in default
15 of their mortgage contract for being two months behind in payments, and that legal action,
16 including foreclosure, may be initiated. Plaintiffs were not in fact behind in mortgage payments.

17 7.

18 Plaintiffs contacted PHH no less than 15 separate times in writing and by telephone to
19 understand why two months of mortgage payments had not been received or recorded by PHH.

20 8.

21 PHH also unilaterally increased Plaintiffs' mortgage payment requirement by \$359.29
22 monthly to create an escrow account for PHH to pay Plaintiffs' homeowners insurance and taxes.

23 9.

24 Despite Plaintiffs' at least 15 attempts to resolve the issues with the increased payments
25 for escrow, and allegation that Plaintiffs' were two months late on their mortgage payments,
26 PHH ignored the issue and continued sending delinquency notices to Plaintiffs.

27 10.

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Page 2 – COMPLAINT- JURY TRIAL DEMANDED

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1 PHH reported Plaintiffs to credit reporting bureaus claiming that Plaintiffs were late on
2 their mortgage payments, which reduced Plaintiffs' credit scores.

3 11.

4 Plaintiffs attempted to resolve these issues with PHH by hiring an attorney to work with
5 PHH, complaining to the Better Business Bureau, and registering a complaint with the Oregon
6 Attorney General, however, PHH has made little or no effort to resolve these issues.

7 12.

8 Despite Plaintiffs attempts to resolve these issues with PHH, PHH still owes \$866.16 and
9 interest to Plaintiffs for Plaintiffs' good faith payments into the escrow account.

10 **FIRST CLAIM FOR RELIEF**
11 **(Negligence)**

12 13.

13 Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 12 above.

14 14.

15 When entering into the mortgage contract with Plaintiffs, PHH entered into a relationship
16 whereby PHH became responsible for monitoring Plaintiff's account and ensuring that Plaintiffs
17 account was managed as would be reasonably expected by a home mortgage lender.

18 15.

19 PHH's sending delinquency notices threatening foreclosure to Plaintiffs, unilaterally
20 creating an escrow account, and/or unilaterally changing the parties' mortgage contract was
21 caused by PHH's negligence in one or more of the following particulars:

- 22 a. Failure to recognize and record Plaintiffs' mortgage payments;
23 b. Failure to respond to Plaintiffs' requests to communicate; and/or
24 c. Failure to manage Plaintiff's mortgage account.

25 16.

26 As a result of PHH's negligence, Plaintiffs' have received a large amount of letters from
27 PHH threatening foreclosure, Plaintiffs had to pay additional money to PHH to avoid
28 foreclosure, and Plaintiffs had to spend numerous hours writing letters and attempting to

1 communicate with PHH, including hiring an attorney. Because of the stress of the threatened
 2 foreclosure on Plaintiffs' home, Mrs. Brink was forced to seek medical assistance to care for her
 3 distress and anxiety.

4 17.

5 Plaintiffs have suffered from worry, unrest, anxiety, fear, loss of sleep, experienced
 6 extreme emotional distress, and have suffered economic damages in an amount to be proven at
 7 trial, not less than \$5,000. Because of the distress suffered, Plaintiffs have suffered non-
 8 economic damages in an amount to be proven at trial, but not less than \$100,000.

9
 10 **SECOND CLAIM FOR RELIEF**
 (Breach of Contract)

11 18.

12 Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 12 above.

13 19.

14 The material terms in the parties' mortgage contract include Plaintiffs' monthly payment
 15 of their mortgage loan, Plaintiffs' abiding by all of rules and payment terms as defined in the
 16 contract. Plaintiffs have fulfilled all material duties under the mortgage contract.

17 20.

18 The material terms in the mortgage contract include PHH's not opening an escrow
 19 account without specifically being authorized to do so, managing Plaintiffs' mortgage payments,
 20 accurately reporting and recording Plaintiffs' mortgage payments, and accurately notifying
 21 Plaintiffs of any default in the contract. The mortgage contract further includes the implied
 22 duties of good faith and fair dealing in performing the contract.

23 21.

24 Beginning in June 2010, and continuing to the present, PHH has wrongfully sent
 25 Plaintiffs foreclosure notices, set up an escrow account to pay Plaintiffs' insurance and property
 26 taxes, demanded additional monthly payments, miscalculated the amount of mortgage payments
 27 Plaintiffs have made, and failed to return Plaintiffs' escrow account payments.

28 22.

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Page 4 – COMPLAINT- JURY TRIAL DEMANDED

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1 Plaintiffs have been damaged by PHH's breach of the contract in an amount to be proven
 2 at trial, but not less than \$1,000, plus their attorney fees and costs incurred herein pursuant to the
 3 terms of the contract.

4 **THIRD CLAIM FOR RELIEF**

5 (Breach of the Implied Duties of Good Faith and Fair Dealing)

6 23.

7 Plaintiffs re-allege and incorporates by reference paragraphs 1 through 22 above.

8 24.

9 Plaintiffs acted in good faith to carry out the terms of the parties' mortgage contract; in
 10 fact, Plaintiffs made mortgage payments per PHH's demands even though Plaintiffs knew that no
 11 payments were due. Plaintiffs followed the terms of the contract by notifying PHH in writing
 12 and by telephone of the issues even after PHH ignored their letters and telephone requests for
 13 help. PHH never responded to Plaintiffs' attorney demands. Rather than working with Plaintiffs
 14 to resolve the issues, PHH allowed Plaintiffs to make phone calls to PHH and then hang up on
 15 Plaintiffs or inform Plaintiffs to call back a different time. PHH also instructed Plaintiffs to call
 16 other phone numbers for assistance, or transfer Plaintiffs' phone calls to other people who could
 17 not provide assistance.

18 25.

19 Plaintiffs' complaints of PHH's breaches of contract were never remedied even after
 20 PHH assured Plaintiffs that the breaches would be remedied. PHH intentionally refused to work
 21 with Plaintiffs to remedy the issues as alleged above, specifically to exhaust, frustrate, and anger
 22 Plaintiffs so that Plaintiffs would give up on their attempts to remedy the issues.

23 26.

24 PHH's behavior toward Plaintiffs has breached its duty of good faith and fair dealing
 25 implied in its contract with Plaintiffs.

26 27.

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1 Plaintiffs have suffered from worry, unrest, anxiety, fear, loss of sleep, experienced
2 extreme emotional distress because of PHH's treatment of Plaintiffs' and PHH's breach of the
3 duties implied in the contract.

4 28.

5 Plaintiffs have been damaged by PHH's breach in an amount to be proven at trial, but not
6 less than \$200,000.

7 **FOURTH CLAIM FOR RELIEF**
8 (Breach of Fiduciary Duty)

9 29.

10 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 12 above.

11 30.

12 When PHH unilaterally created an escrow account for Plaintiffs' benefit to pay Plaintiffs'
13 insurance and property taxes, PHH undertook fiduciary responsibilities, including the fiduciary
14 duty of care.

15 31.

16 PHH has improperly created an escrow account, demand payment into the escrow
17 account, apply the funds from the escrow account as promised, account for the money in the
18 escrow account, and failed to return the money to Plaintiffs from the escrow account.

19 32.

20 Plaintiffs have been required to expend monies to hire an attorney, and they have suffered
21 from worry, unrest, anxiety, fear, loss of sleep, experienced extreme emotional distress because
22 of PHH's breaches of its fiduciary duties to Plaintiffs.

23 33.

24 Plaintiffs have been damaged by PHH's breach of fiduciary duties in an amount to be
25 proven at trial, but not less than \$100,000.

26 **FIFTH CLAIM FOR RELIEF**
27 (Defamation - Libel)

28 34.

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 12 above.

35.

Beginning in on or about June 2010, and continuing regularly and frequently since then, PHH, by and through its agents and employees through the theory of *respondeat superior*, have intentionally, maliciously, and wrongfully published verbal and written statements to third parties concerning Plaintiffs that PHH actually knew were false or were made with reckless disregard as to its truth or falsity or negligently made as to its truth or falsity, were made without reasonable grounds for belief in its truth, and were made without reasonably adequate investigation.

36.

The statements published by PHH concerning Plaintiffs include but are not limited to:

- (a) That Plaintiffs were two months late on their mortgage payments;
- (b) That Plaintiffs were delinquent on their mortgage payments; and
- (c) That Plaintiffs were in breach of their mortgage contract.

37.

The statements made by PHH concerning Plaintiffs were published in that they were made to consumer credit bureaus that have used the information to report Plaintiffs' credit.

38.

Plaintiffs are not public figures and are not involved in any public controversy. PHH's statements concerning the Plaintiffs do not involve a matter of public concern.

39.

The statements published by PHH concerning Plaintiffs are defamatory in that the statements tend to subject Plaintiffs to reduced credit availability, and diminish the esteem, respect, goodwill or confidence in which the Plaintiffs are held by a substantial and respectable majority of the community.

40.

The statements published by PHH concerning Plaintiffs are false.

41.

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1 The statements published by PHH concerning Plaintiffs have been published and
2 communicated directly to third persons.

3 42.

4 The statements published by PHH concerning Plaintiffs have, in fact, diminished the
5 Plaintiffs' credit rating and the esteem, respect, goodwill or confidence in which the Plaintiffs are
6 held by a substantial and respectable majority of the community has been diminished.

7 43.

8 As a result of the statements published by PHH concerning Plaintiffs, Plaintiffs have been
9 unable to qualify to refinance their home mortgage to obtain affordable financing. Plaintiffs
10 have suffered economic damages of not less than \$20,000 and non-economic damages to their
11 reputations in the community and emotional suffering in the amount not less than \$75,000.

12 44.

13 Plaintiffs hereby give notice to PHH that Plaintiffs reserve the right to amend this
14 Complaint after further discovery and investigation of additional claims.

15 **WHEREFORE**, Plaintiffs pray for judgment as follows:

16 1. On Plaintiffs' first claim for relief (Negligence), Plaintiffs seek judgment for
17 Plaintiffs and against Defendant PHH for non-economic damages in the amount not less than
18 \$100,000;

19 2. On Plaintiffs' second claim for relief (Breach of Contract), Plaintiffs seek
20 judgment for Plaintiffs and against PHH for economic damages in the amount not less than
21 \$1,000, plus Plaintiffs' attorney fees and costs;

22 3. On Plaintiffs' third claim for relief (Breach of the Implied Duties of Good Faith
23 and Fair Dealing), Plaintiffs seek judgment for Plaintiffs and against PHH for non-economic
24 damages in the amount not less than \$200,000;

25 4. On Plaintiffs' fourth claim for relief (Breach of Fiduciary Duty), Plaintiffs seek
26 judgment for Plaintiffs and against PHH for non-economic damages in the amount not less than
27 \$100,000;

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1 5. On Plaintiffs' fifth claim for relief (Defamation - Libel), Plaintiffs seek judgment
2 for Plaintiffs and against PHH for economic damages in an amount not less than \$20,000 plus
3 non-economic damages in the amount not less than \$75,000.

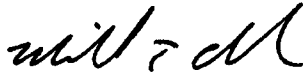
4 6. For costs and disbursements incurred herein, including an enhanced prevailing
5 party fee under ORS 20.190 in the maximum amount;

6 7. Post-judgment interest at the rate of nine percent (9%) per annum from the date of
7 entry of judgment on the principal amount; and

8 8. Such other relief as is just and equitable.

9
10 DATED this 20 day of April, 2011.

11
12 Respectfully submitted,

13 

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CERTIFICATE OF SERVICE

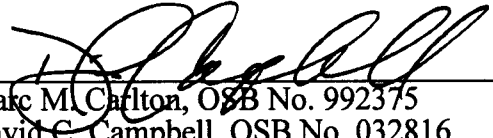
I certify that on May 20, 2011, I served a true copy of the foregoing **NOTICE OF REMOVAL** on the following named persons by the method indicated below:

Michael T Clarke
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T 503 543-4800
Email AttorneyClarke@gmail.com

- ☒ Via First Class Mail
☐ Via Federal Express
☐ Via Facsimile
☐ Via Hand-Delivery
☐ Via E-Mail

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